

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DAVID A. PIERCE,

Petitioner,

v.

Case No. 20-CV-1300

CHERYL EPLETT,

Respondent.

DECISION AND ORDER DENYING MOTION TO DISMISS

On August 24, 2020, David A. Pierce, who is currently incarcerated at the Oakhill Correctional Institution, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Docket # 1.) The respondent filed an answer to Pierce's habeas petition on December 2, 2020. (Docket # 11.) Since then, Pierce has filed various motions for miscellaneous relief, including for more time to file an opening brief in support of his habeas petition. In an order dated February 17, 2022, I granted the respondent's request to clarify the briefing schedule in this case, gave Pierce 45 days from the date of the order to file an opening brief, and gave the respondent 45 days following the due date of Pierce's brief to file a brief in opposition. (Docket # 32 at 5.) I warned Pierce that if he failed to file an opening brief, his habeas petition would be decided without his input. (*Id.*)

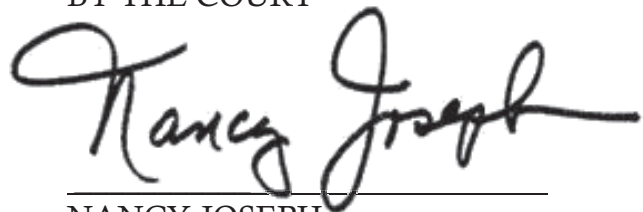
Pierce did not file an opening brief. On June 20, 2022, the respondent filed a motion to dismiss Pierce's habeas petition for failure to prosecute and failure to comply with a court order. (Docket # 34.) The respondent argues that Pierce's habeas petition should be dismissed with prejudice because Pierce has ignored several deadlines to file his brief as ordered by the

Court and has shown no interest in prosecuting his case. (Docket # 35 at 5–6.) I am cognizant of the delays in this case. However, the February 17, 2022 order stated that if Pierce did not file a brief, his habeas petition would be decided based on the record before me, not based on Pierce’s failure to prosecute. Pierce requests habeas relief based on claims of insufficient evidence, erroneously admitted evidence, and ineffective assistance of counsel. (Docket # 1-6.) If the respondent wishes to provide input on the merits of Pierce’s claims, she should file a brief in opposition to the habeas petition. As such, the respondent’s motion to dismiss is denied.

NOW, THEREFORE, IT IS ORDERED that the respondent’s motion to dismiss (Docket # 34) is **DENIED**. The respondent shall have 30 days from the date of this order to file a brief on the merits of Pierce’s claims for habeas relief.

Dated at Milwaukee, Wisconsin this 15th day of July, 2022.

BY THE COURT

A handwritten signature in black ink, reading "Nancy Joseph", written over a horizontal line.

NANCY JOSEPH
United States Magistrate Judge